

[Submitting Counsel on Signature Page]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: SOCIAL MEDIA ADOLESCENT
ADDICTION/PERSONAL INJURY
PRODUCTS LIABILITY LITIGATION

THIS DOCUMENT RELATES TO:

4:23-cv-05448

MDL No. 3047

Case No. 4:22-md-03047-YGR

**STATE ATTORNEYS GENERAL'S
AFFIRMATIVE LETTER BRIEF
EXPLAINING GROUNDS FOR
ANTICIPATED MOTIONS FOR
SUMMARY JUDGMENT AND *DAUBERT*
MOTIONS**

Judge: Hon. Yvonne Gonzalez Rogers

Magistrate Judge: Hon. Peter H. Kang

Pursuant to CMO 27 (ECF 2274) and the pre-filing schedules approved in CMO 27 (ECF 2271), the State Attorneys General Plaintiffs ("State AGs") file this letter brief setting forth the bases of their anticipated motions for partial summary judgment and *Daubert*.

I. Motions For Partial Summary Judgment

The State AGs propose filing two motions for partial summary judgment regarding Meta's noncompliance with various requirements of the Children's Online Privacy Protection Act ("COPPA").

1. **Anticipated Motion #1: Meta has violated COPPA by continuing to use the "personal information" of children to train its machine learning and generative AI models even after Meta checkpointed and "disabled" their accounts because they belong to children under 13.**

COPPA aims to “safeguard the confidentiality, security, and integrity of ... children's personal online information” by requiring “companies that operate websites and online services marketed toward children ... [to] provide certain disclosures about their data collection activities.” *Jones v. Google LLC*, 73 F.4th 636, 641 (9th Cir. 2023). Under COPPA it is unlawful for a website or online service that is “directed to children” or has “actual knowledge” of child users (those under the age of 13) to collect, use, or disclose personal information from those children unless the platform complies with relevant FTC regulations. 15 U.S.C. § 6502(a)(1); 16 C.F.R. § 312.3. ECF 1214 at p. 16.

The State AGs anticipate filing a motion for partial summary judgment establishing that Meta violated COPPA by using children’s personal information to train its machine learning and generative AI models without providing COPPA’s required protections. Discovery has shown that Meta checkpoints (i.e., suspends) the accounts of users it determines are likely children (such as after a user changes their birthdate to be under 13, or Meta’s human reviewers review a reported account and determine the owner is likely a child), and disables those accounts after 30 days if the user does not successfully appeal by presenting an ID demonstrating they are 13 or older. Meta therefore has “actual knowledge” for COPPA purposes that the users that Meta has checkpointed and disabled are children.

Despite “actual knowledge” that these users are children, Meta has admitted in Rule 30(b)(6) testimony that it continues to use the personal information of such users to train its machine learning and generative AI models, violating COPPA’s requirements.

2. Anticipated Motion #2: Meta fails to provide COPPA’s required protections to any child users of Facebook and Instagram.

The State AGs anticipate filing a second motion for partial summary judgment to establish the following elements of COPPA, all of which supported by Meta’s responses to Requests for Admission or otherwise essentially uncontested. Courts routinely grant this type of partial summary judgment on elements or parts of a claim, even short of establishing liability. *See, e.g., State Farm Fire & Cas. Co. v. Geary*, 699 F. Supp. 756, 759 (N.D. Cal. 1987); *Freeman v. Ethicon, Inc.*, 619 F. Supp. 3d 998, 1008 (C.D. Cal. 2022); *Fed. Trade Comm’n v. Surescripts, LLC*, 665 F. Supp. 3d 14, 37–38 (D.D.C. 2023). Granting summary judgment as to these elements will narrow the issues, streamlining the trial and focusing the jury’s attention with respect to Meta’s COPPA liability on the two elements that are actually in dispute: whether Facebook or Instagram (or portions thereof) are “directed to children,” and whether Meta had actual knowledge that its users were children under age 13, separate and apart from those users discussed above with respect to Anticipated Motion #1.

a. Meta is an “operator” of Instagram and Facebook, which are both websites or “online services.”

COPPA requires an operator of a website or online service to obtain parental consent before it collects or uses the personal information of a child who is under 13. *See* 15 U.S.C. §§ 6501(1), 6502(a), 6502(b)(1)(A)(ii); 16 C.F.R. § 312.5(a)(1).

Meta’s discovery responses establish that it is an “operator” of Instagram and Facebook for COPPA purposes. Both platforms are indisputably websites or online services.

b. Meta collects “personal information” from users of Facebook and Instagram, including those who visit Facebook and Instagram without logging into an account.

“Personal information” is defined by statute and regulation to mean “individually identifiable information about an individual collected online,” including the child’s name, address, email address, personal identifiers, geolocation information, and photographs or videos of the child, among other categories of information. 15 U.S.C. § 6501(8); 16 C.F.R. § 312.2.

Discovery responses, including citation to Meta’s privacy policy, establish Meta collects personal information as defined by COPPA from users of Facebook and Instagram, including those who visit without logging into an account.

c. Meta has not provided COPPA’s protections for any children on Facebook or Instagram.

COPPA requires operators of websites or online services directed to children or those who have actual knowledge they are collecting or maintaining personal information from children to provide various protections with respect to children’s personal information.

Meta has admitted in responses to Requests for Admission that it does not provide the following four protections:

- i. Meta has not sought or obtained “**verifiable parental consent**” before any collection, use, or disclosure of personal information from children on Facebook or Instagram, 16 C.F.R. § 312.5(a)(1). *See Responses to Requests for Admissions 6 and 19.*
- ii. Meta has not provided parents with “**direct notice of [its] practices** with regard to the collection, use, or disclosure of personal information from children,” 16 C.F.R. § 312.4(b), nor has Meta **posted a notice of its practices** with respect to children’s personal information, 16 C.F.R. § 312.4(d). *See Response to Requests for Admission 18.*
- iii. Meta has not provided parents with “**a means of reviewing** any personal information collected from the[ir] child” on Facebook or Instagram. 16 C.F.R. § 312.6(a)(3). *See Responses to Requests for Admissions 7 and 20.*
- iv. Meta has not provided parents with “[t]he opportunity at any time to **refuse to permit [Meta’s] further use** or future online collection of personal information from that child, and to direct [Meta] to **delete** the child’s personal information.” 16 C.F.R. § 312.6(a)(2). *See Response to Requests for Admission 21.*

While Meta presumably disputes that it was required to provide COPPA’s protections to

1 children on Facebook and Instagram, there is no dispute as to the material fact that Meta provided
2 none of the four protections above to any children or their parents. Summary judgment should be
3 granted to establish these elements of the State AGs' COPPA claim.

4 **II. *Daubert* Motion**

5 The State AGs do not anticipate filing Daubert motions related to Meta's responsive experts
6 Emilio Ferrera, Jeremy Birnholtz, Sriraman Venkataraman, Kevin Keller, and Bruce Isaacson to
7 MDL State AGs experts Ravi Iyer and Adam Alter. However, the State AG's reserve all rights to
8 seek to exclude opinions from these experts through Motions before trial. As flagged in a prior
9 letter brief identifying potential motions this Court may see from the State AGs (ECF 2172), the
10 State AGs anticipate filing Motions to exclude expert opinions that provide opinions on topics not
11 at issue or no longer at issue in this case, such as opinions that primarily relate to content moderation
12 or opinions responding to issues that have not been raised within the MDL State AG case.

1 **Dated: November 19, 2025**

2 Respectfully submitted,

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I, Verna Pradaxay, hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

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